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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,106	11/09/2001	Daniel K. Schiffer	KCC-15,891	3014
35844	7590	06/27/2006	EXAMINER	
PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195			SPERTY, ARDEN B	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/036,106	Applicant(s) SCHIFFER ET AL.	
	Examiner Arden B. Sperty	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-26,31,35 and 37-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-26,31,35,37-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

NON-FINAL OFFICE ACTION

1. Applicant's amendments and remarks, submitted 6/05/06 with the filing of a Request for Continued Examination, have been entered and carefully considered.
2. Applicant's amendment is sufficient to overcome the rejection under 35 USC 112, second paragraph, previously stated in the Final Office Action of 2/08/06.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 21-26, 31, 35, 37-39, 41, 44-54, and 56-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5374259 to Takahashi et al., in view of US Patent 6028160 to Chandler et al.
5. The Takahashi reference teaches biodegradable films and nonwovens used in disposable personal care articles (col. 1, lines 6-13). Breathable films made from biodegradable polymeric materials are filled and stretched to provide air-permeability (col. 7, line 65- col. 8, line 12). Films and nonwovens are bonded together as desired to form a diaper (col. 12, line 67-col. 13, line 2). The films and nonwovens are used as various parts of a diaper, so as to provide a final composite which is completely biodegradable (col. 2, lines 5-32). The reference is not concerned with the layering sequence of films and nonwovens. Example 2 includes a nonwoven cloth, and a film

backing, both made of the biodegradable polymer (column 13). The sequence of laminated films and nonwovens further varies in diaper construction according to desired functions. Determining and varying an optimal sequence of layers is basic in the science of materials engineering. Absent a showing of unexpected results with a specific number of layers and layer sequence, it would have been obvious to one of ordinary skill in the art to assemble the biodegradable films and nonwovens as desired for optimal results.

6. The Takahashi reference is silent with respect to the claimed terpolymer. Although the specific terpolymer is not recited by the Takahashi reference, functionally equivalent biodegradable polymeric film-forming materials, including the claimed terpolymer, are commercially available as prepared compositions. The Chandler prior art employs one such functionally equivalent material, Ecoflex (col. 2, lines 54-57). Ecoflex is a biodegradable film-forming composition comprising a terpolymer of terephthalic acid, adipic acid, and 1,4-butanediol. It would have been obvious to one of ordinary skill in the art, at the time the claimed invention was made, to use commercially available functional equivalents in practicing that which is taught by Takahashi. One of ordinary skill in the art would have been motivated by convenience and efficiency provided by a commercially available prepared composition.

7. The layers of the Takahashi reference may be formed from the same material to facilitate thermal bonding (col. 9, lines 24-29). The examiner takes official notice that additional bonding means, such as adhesive bonding, are known to those of ordinary skill in the art and would have been obvious to employ as needed.

8. Spunbond and meltblown nonwovens are specifically recited by the Takahashi reference (col. 8, lines 20-26).

9. Regarding claims 44-47, and 50, the Takahashi reference is not concerned with the specific amount of filler and polymeric material. Absent a showing of unexpected results with specific proportions, it would have been within the ordinary level of skill of one in the art to determine these amounts.

10. Regarding claims 48-49, stretching preferences would have been obvious to one of ordinary skill in the art. Claims 40, 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Takahashi and Chandler, as applied to claim 21 above, and further in view of Roberts, "β-cyclodextrin Molecules and Their Use in Breathable Barriers."

11. The Takahashi reference teaches a filled, stretch-thinned biodegradable film, wherein a variety of fillers may be used. While the references are silent with respect to organic or cyclodextrin fillers, Roberts teaches that β-cyclodextrin enhances moisture vapor permeability of polymeric barrier films. It would have been obvious to one of ordinary skill in the art to use cyclodextrin as a filler in the invention of Takahashi to enhance vapor permeability of the personal care product. (See Roberts section 1.3).

12. Response to ArgumentsThe "continuously adjacent" claim requirement does not narrow the structure to exclude intermediate layers. This position is supported by *Ex parte Hadsel* 109 USPQ 509, and *Ex parte Appeldorn* 159 USPQ 791. Thus, the previously stated rejections still apply.

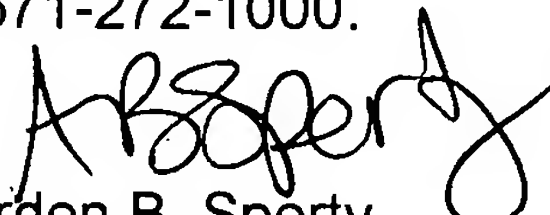
13. Applicant argues the examiner's assertion that functionally equivalent polymers would have been obvious substitutions. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The examiner's position does not rely on knowledge gleaned only from the applicant's disclosure.

Conclusion

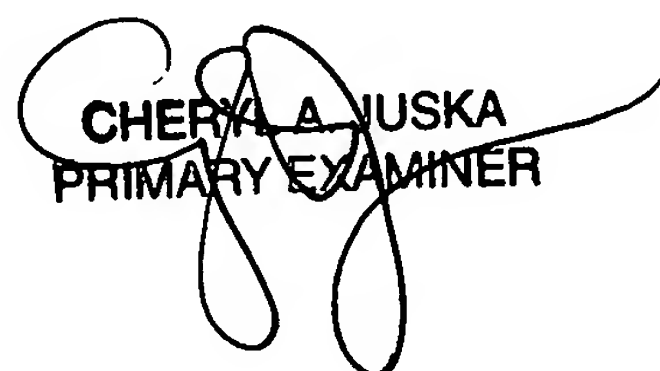
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arden B. Sperty whose telephone number is (571)272-1543. The examiner can normally be reached on M-Th, 08:00-16:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571)272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Arden B. Sperty
Examiner
Art Unit 1771

June 21, 2006


CHERYL A. JUSKA
PRIMARY EXAMINER